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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,577	03/26/2004	Brian K. Shaffer	84,031	9307

7590

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Office of Counsel Code OC4  
Naval Surface Warfare Center  
Indian Head Division  
101 Strauss Ave., Bldg. D-31  
Indian Head, MD 20640-5035

EXAMINER

CLEMENT, MICHELLE RENEE

ART UNIT

PAPER NUMBER

3641

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/816,577

Applicant(s)

SHAFFER ET AL.

Examiner

Michelle (Shelley) Clement

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 and 14-24 is/are pending in the application.
- 4a) Of the above claim(s) 8,9 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 14-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection as necessitated by applicant's amendments.

### ***Election/Restrictions***

2. Newly submitted claims 8, 9 and 24 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The inventions are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination as claimed does not require the reflective surface moveably mounted substantially axially with the surface, wherein a user moves the reflective surface to site the reference on the target. The subcombination has separate utility such as a mirror.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 8, 9 and 24 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Specification***

3. The amendment filed 9/15/05 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new

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matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the reflecting surface at least as large as the surface.

Specifically applicant's figures show that element 6, the reflective surface, is smaller than element 3.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Objections***

4. Claims 17-21 are objected to because of the following informalities: the claims are confusing in view of the specification because the specification and the figures do not correspond. The specification, on page 6 ¶ 1 states that the angle A, between line of sight 4 (or claimed first line of sight) and the reflective surface, is between zero and ninety degrees, yet figure 1 shows angle A defined between line of sight 10 and the reflective surface. Angle B, in figure 2 appears to indicate rotation about an axis, not an angle. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 6, 7 and 14-22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Totten (US Patent # 187,432). Totten discloses a aiming device comprising a surface showing a reference to a target and a reflective surface moveably mounted substantially axially with the surface, wherein a user moves the reflective surface to site the reference on the

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target, and wherein the reflective surface is angularly adjustable at various viewing angles to the reference. The device further comprising a base, attachable to a system to be aimed. The device comprising a bubble leveling mechanism attached to a base. The reflective surface is angularly adjustable at various angles within at least two dimension in relation to the reference. (It is noted that a plane defines two dimensions therefore any device that moves within a plane would move within at least two dimensions). A first line of sight exists between the reflective surface and the target and a first angle between zero and ninety degrees vertically exists between the first line of sight and the reflective surface. Depending on orientation of the device an additional line of sight, or second line of sight exists between a user and the reflective surface and a second angle between minus ninety degrees and ninety degrees horizontally exists between the second line of sight and the reflective surface. (It is noted that the device can be oriented in any manner). The reflective surface is at least as large as the surface.

7. Claims 1, 3, 4 and 23 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Weber (US Patent # 4,108,551). Weber discloses an aiming device comprising an aiming device comprising a surface showing a reference to a target and a reflective surface moveably mounted substantially axially with the surface, wherein the reflective surface is angularly adjustable at various angles to the reference. The aiming device comprises a holographic sight. The device further comprising a mounting mechanism for mounting the reflective surface, attached to a base. The reflective surface rotates on the mounting mechanism in at least two dimensions (it is noted that a plane defines two dimensions therefore any device that moves within a plane would move within at least two dimensions). The device further comprising a magnifying lens mounted proximate to the first reflective surface.

***Claim Rejections - 35 USC § 103***

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weber as applied to claims 1 and 4 above. Weber discloses the claimed invention except for the mounting mechanism expressly comprising a ball and socket mount. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a ball and socket joint or any known equivalent mounting mechanism that would allow the reflective surface to be pivotable about both axis 7 and 8 without limitation, since the selection of any of these known equivalents of joints would be within the level of ordinary skill in the art.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Chapman (US Patent # 3,966,298), Numbers (US Patent # 4,084,326), Isbell et al. (US Patent # 6,154,313) and Gaber (US Patent # 6,487,809).

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "M. Clement", is located in the lower right quadrant of the page.